

APPEAL NO. 020330
FILED APRIL 2, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 25, 2002. The hearing officer held that the appellant (claimant) did not sustain a compensable injury, that he did not give timely notice of injury to his employer, and that there was no good cause for failing to give timely notice. He also held that the claimant did not have disability (because there was no compensable injury).

The claimant has appealed the determinations against him, and argues that there may be retaliation against him and racism behind the denial of his claim. There is no response on file from the respondent (carrier).

DECISION

We affirm the hearing officer's decision.

The claimant contended that he hurt his left knee and both feet by walking around the employer's place of business while cleaning tables, with a date of injury of _____. His first medical treatment was August 22, 2001. He was diagnosed with a left knee sprain and taken off work. The restaurant manager stated that he understood that the claimant's feet were bothering him when the claimant worked with his shoes off one day but that he did not recall if the claimant identified work as the cause of his problems. The manager said he first heard of a complaint about the claimant's knee pain at the CCH. The claimant said he had not worked since a disputed resignation on December 29, 2001.

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza. An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

Section 409.001(a)(1) & (b) require that the injured employee give notice of an accidental injury to a person in a supervisory or management capacity within 30 days. However, the notice given, while it need not be fully detailed, should at a minimum

advise the employer of the fact that an injury has been sustained and the general area of the body affected. Texas Employers' Insurance Association v. Mathes, 771 S.W.2d 225 (Tex. App.-El Paso 1989, writ denied). Temporary income benefits are due when an injured worker has not reached maximum medical improvement and has disability. Section 408.101(a). Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." When no injury is found to have occurred, the threshold requirement for a finding of disability does not exist.

All of the fact determinations made were the responsibility of the hearing officer to assess. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

The true corporate name of the insurance carrier is **ARGONAUT INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**BOBBY E. HAMMOND JR.
1431 GREENWAY DRIVE, SUITE 450
IRVING, TEXAS 75038.**

Susan M. Kelley
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Terri Kay Oliver
Appeals Judge